

Instruction Memorandum

TO: CBM Operators

FROM: Gary Beach, Administrator

SUBJECT: Discharges from Off-channel, Complete Containment Ponds.

DATE: November 19, 2001

Background

In an instruction memorandum dated July 19, 2001, I expressed the agency's position with respect to NPDES permits for off-channel, complete containment ponds. The memo of July 19, 2001 provides a rationale for the state's jurisdiction over discharges to isolated waterbodies. Since that time another issue has arisen that requires further clarification. I understand that there are situations where landowners, in cooperation with operators, are utilizing water from these complete containment ponds for purposes of irrigation or enhancement of rangeland resources. This practice may also assist the operator with water management. The question has come up about the permitting requirements for this kind of activity associated with a Option 1A complete containment proposal, or for that matter, Option 2 proposals where irrigation activities may be associated with reservoirs.

Agency Expectations (For Powder, Little Powder and Tongue River Drainages)

OPTION 1A

With respect to seeking a permit under Option 1A, we must remember that this option is permitted on the basis that the discharge is only to a Class 4C water (the created off-channel containment reservoir) and that no other waters of the state will be affected. A proposal to discharge water from the containment unit for purposes of irrigation raises the concern that there may be return flow to other waters of the state, (i.e., no longer a complete containment option 1A). For this situation to be permitted as an off-channel complete containment option 1A, the applicant must demonstrate that return flows will not reach other surface waters of the state. If this demonstration cannot be made, the proposal will be considered as an Option 2 and permit effluent limits will be set accordingly for downstream uses of the water.

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OPTION 2

Option 2 applications proposing the development of new irrigation systems which draw water from reservoirs or collection systems used to manage the discharge water do not require a demonstration that return flows will not reach other surface waters of the state. In addition, a Section 20 irrigation analysis is not required in Option 2 applications unless there are downstream irrigation activities that existed before CBM development.

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